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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1941

No. 716

UNIVERSAL INSURANCE COMPANY
(a corporation),
Petitioner,

vs.

HALL-SCOTT MOTOR CAR COMPANY
(a corporation),
Respondent.

PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

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Subject Index

Page

Petition for writ of certiorari 1

Summary and short statement of the matter involved.. 2

Jurisdiction 5

Question presented 6

Reasons relied on for allowance of writ 7

Petitioner's brief in support of petition for writ of certiorari 11

I.

Opinions of the Courts below 11

II.

Jurisdiction 12

III.

Statement of facts 13

IV.

Specification of errors 17

V.

Argument 18

1. The California law will not permit a bailee for hire to contract against liability for negligence to property entrusted to his care 18

2. But this is a maritime contract and the admiralty rule will apply 18

3. Benefit of insurance cases are not analogous 19

4. The Syracuse (U. S. Supreme Court) and following admiralty towboat bailee for hire cases clearly and unequivocally establish that in admiralty, a bailee for hire cannot contract against liability for negligence to property entrusted to his care 24

5. (a) The non-bailment Sun Oil case, and 25

(b) The minority rule common law Santa Fe case, and 25

(c) The other non-bailment common law cases 26

cited by the Circuit Court are not analogous to an admiralty bailee for hire problem.

Page

6. To distinguish between a towboat bailee for hire and a shipyard bailee for hire is a distinction without a distinction 27

7. The common law rule is that a bailee for hire cannot contract against liability for damage to property entrusted to his care 27

8. The law should be harmonious and the admiralty and common law rules should coincide, if possible, and not conflict 28

9. The decision of the Circuit Court, if allowed to stand, make the admiralty law conflict with itself as well as with the common law; whereas prior to the decision of the Circuit Court the admiralty law and the common law coincided 28

10. This was no isolated transaction but the respondent dealt generally with the public 29

11. The Circuit Court showed its bias against petitioner by inferring that the parties intended the respondent should have the benefit of petitioner's insurance, whereas the parties specifically recognized such was not the case 30

Conclusion 32

Table of Authorities Cited

Cases

Alaska Commercial Company v. Williams (C.C.A. 9), 128 Fed. 362 24

Baltimore and Ohio, etc. v. Voight, 176 U. S. 498.....26, 27

Compania de Navigacion v. Ins. Co., 277 U. S. 66.....24, 28, 29

International Mercantile Marine, etc. v. W. A. Fletcher Co. (C.C.A. 2), 296 Fed. 855.....19, 20, 22, 23

McCormick v. Shippy (C.C.A. 2), 124 Fed. 48.....20, 21

Myroie v. British Columbia Mills, etc. (C.C.A. 9), 268 Fed. 449 .....20, 22, 24

Newport News Shipbuilding and Dry Dock Co. v. United States (C.C.A. 4), 34 Fed. (2d) 100.....18, 19, 20, 23

Oceanica (C.C.A. 2), 170 Fed. 893 (96 C.C.A. 69)..... 20

Ringling Brothers, etc. Shows v. Olivera (C.C.A. 9), 119 Fed. (2d) 584 .....26, 27

Robinson v. Baltimore and Ohio, etc. Co., 237 U. S. 84....26, 27

Sacramento Navigation Co. v. Salz (C.C.A. 9), 3 Fed. (2d) 759 24

Santa Fe Railway Co. v. Grant, 228 U. S. 177, 33 Sup. Ct. 474, 57 L. Ed. 787 .....23, 25, 26

Steamer Syracuse etc. v. Langley, 12 Wall. 167, 20 L. E. 382 .....20, 24, 26, 28, 29

Sun Oil case, 287 U. S. 291 .....25, 26

Codes and Statutes

Judicial Code:

Section 24 ..... 6, 12

Section 128 ..... 6, 12

Section 240 .....6, 12, 13

28 U. S. C. A. 41 ..... 6, 12

28 U. S. C. A. 225 ..... 6, 12

28 U. S. C. A. 347 ..... 6, 12

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PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States and to the Associate Justices of the Supreme Court of the United States:

Petitioner respectfully presents to this Honorable Court, its petition for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit, to review a decision made and entered by that Court on August 20, 1941 (R-207-8), reversing the judgment

in favor of the petitioner made in the Southern Division of the United States District Court in and for the Northern District of California, on January 15, 1941, and entered January 16, 1941. (R-33-4.) Petition for rehearing, filed in the said Circuit Court of Appeals, was denied on September 22, 1941. (R-208.)

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED.

This case involves the right of a shipyard bailee for hire to contract that he may be free from the consequences of his negligent damage to property entrusted to his care.

This action was brought in the United States District Court for the Northern District of California to recover damages resulting from the almost total destruction by fire of the gasoline power cruiser PACIFICA *while in the custody* of the Hall-Scott Motor Car Company, hereinafter called the respondent. The action was brought on the law side of the Court and jurisdiction was predicated upon diversity of citizenship. The case was tried to the Court without a jury, by stipulation. Judgment was for the plaintiff for the sum of Three thousand two hundred ($3-200.00) Dollars. The District Court found that the fire resulted from the negligence of the respondent. From a judgment in favor of plaintiff and petitioner herein, respondent appealed to the United States Circuit Court of Appeals for the Ninth Circuit.

The PACIFICA had been sold by R. J. Hooper and Mrs. R. J. Hooper, his wife, to R. Jack Hofmann

by conditional sales contract. Hofmann wished to replace the gasoline motor in the PACIFICA with a reconditioned Invader engine belonging to respondent. The PACIFICA was delivered to the respondent for that purpose at respondent's float and boat house in December, 1939.

A conditional sales contract was entered into between the buyer and seller on January 4, 1940, wherein it was agreed that respondent should install the motor in the PACIFICA.

Manuel Marks, an employee of respondent, was working on the vessel on January 5, 1940, preparing for the installation of the motor (after having removed the old engine) when an explosion and fire occurred which resulted in the almost total destruction of the PACIFICA and the death of Manuel Marks. *The boat was, at the time of its destruction, solely in the custody of respondent as a bailee for hire.*

The owners of the vessel were insured against loss by fire with Universal Insurance Company, petitioner herein. Petitioner paid Hofmann and Hooper the fire loss of Three thousand two hundred ($3200.00) Dollars on January 19, 1940, under the terms of the insurance, and was thereupon subrogated to any rights and remedies that Hofmann and Hooper might have to recover for said damage from any third person, including respondent.

Petitioner brought this action against respondent as subrogee of the insured. The complaint contained two counts. The first alleged a delivery of the boat by

the owner to respondent in December, 1939, for the purpose of installing an engine for an agreed consideration. It alleged the total loss of the vessel by fire and the consequent failure to redeliver said vessel.

The second count of the complaint reiterated the facts alleged in the first count and alleged further that the PACIFICA was destroyed by fire on January 5, 1940, because of the negligence of the respondent and its employees.

The answer of respondent admitted the delivery to it of the PACIFICA at its boat house for the purpose of installation of the reconditioned motor under the conditional sales agreement dated January 4, 1940. The answer alleged that the conditional sales contract contained the following agreement:

> "It is understood further Hall-Scott will not be held responsible for any damage to cruiser PACIFICA or for anything taken from same while the engine installation is being made."

The answer also denied negligence on the part of respondent. Because of admissions in the pleadings and stipulations entered into, the only facts in dispute were:

(1) The value of the vessel and the damage thereto. The Trial Court found the damage to be Three thousand two hundred ($3200.00) Dollars and this was not disturbed on appeal, although challenged.

(2) Whether or not the damage to the boat was caused by the negligence of the employees of the respondent. The Trial Court found in favor

of petitioner and this was not disturbed on appeal, although challenged.

(3) Whether the respondent had failed in its contract of bailment to redeliver the boat in good order and condition. The Trial Court found in favor of the petitioner and this was not disturbed on appeal, although challenged.

(4) Whether or not by the clause:

"It is understood further Hall Scott will not be held responsible for any damage to cruiser PACIFICA or for anything taken from same while the engine installation is being made"

respondent shipyard bailee for hire shall be free from the consequences of his negligent damage to property entrusted to his care. The Trial Court found this clause invalid and entered judgment for plaintiff. The judgment of the Trial Court was reversed by the Circuit Court, holding that a shipyard bailee for hire *can* contract against negligence, whereas a towboat bailee for hire *cannot* contract against negligence.

JURISDICTION.

The action was filed in the Southern Division of the United States District Court in and for the Northern District of California, on the law side of the Court. Jurisdiction of the District Court was predicated upon diversity of citizenship and the amount in controversy exceeding, exclusive of interest and costs, the sum or

value of Three thousand ($3000.00) Dollars under Section 24 of the Judicial Code. (28 U.S.C.A. 41.) Petitioner is a corporation organized and existing under and by virtue of the laws of the State of New Jersey and respondent is a corporation organized and existing under and by virtue of the laws of the State of California.

The Circuit Court of Appeals for the Ninth Circuit had jurisdiction of the appeal under Section 128 of the Judicial Code. (28 U.S.C.A. 225.)

This Court has jurisdiction to review the judgment of the Circuit Court of Appeals for the Ninth Circuit under the provisions of Section 240 of the Judicial Code. (28 U.S.C.A. 347.)

The order denying petition for rehearing by the Circuit Court was made and entered on September 22, 1941. (R-208.) This petition will be filed on or before October 29, 1941, or well within the three months allowed by Section 240 of the Judicial Code just cited. A stay of the mandate of the Circuit Court until final disposition by this Court has been obtained. (R-209.)

QUESTION PRESENTED.

The Circuit Court stated the question as follows:

> "Can the parties to a maritime contract to repair a vessel validly stipulate that the repairer may be freed from the consequences of his negligent damage to the vessel in his custody for repairs?" (R-190.)

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

The following are the special and important reasons, addressed to the sound discretion of this Court, and relied on for allowance of a writ of certiorari:

(1) The decision of the Circuit Court herein establishes for the first time that a shipyard bailee for hire *can* contract against liability for negligent damage to property entrusted to his care, while recognizing and re-establishing previous decisions that a towboat bailee for hire *cannot* contract against liability for negligent damage of property entrusted to his care.

(2) The admiralty decisions of this Court on towboat bailee for hire cases and the weight of modern common law authorities supports the rule that a bailee for hire *cannot* contract against liability for negligent damage to property entrusted to his care. There is no justification for a distinction between the liability of a shipyard bailee for hire and a towboat bailee for hire. By making such a distinction the Circuit Court brought the admiralty law in hopeless conflict with itself as well as in hopeless conflict with the common law. The admiralty law should be harmonious with itself. The admiralty law should also be harmonious with the common law, if possible. At a time when millions of dollars are being spent in ship repair, the public is entitled to clarity in the law, not conflict and confusion.

(3) The decision of the Circuit Court herein has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision in the following:

There is no justification for the statement of the Circuit Court herein:

> "The practical effect of the agreement between the parties was to give the motor car company the benefit of the fire insurance coverage." (R-202.)

when the same parties subsequently signed mutual releases and which releases stated:

> "and the within release does not purport to be, nor is it a waiver of any claim that the Universal Insurance Company might have by reason of the said payment." (R-203-204.)

Such a finding indicates that the Circuit Court has gone out of its way in such a manner as to indicate a prejudice against the petitioner who had an obligation under its insurance policy and met it, so as to favor a shipyard which is endeavoring to escape a liability that is morally, and we submit legally, theirs.

WHEREFORE, Petitioner prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Ninth Circuit, and submits its brief hereto attached, in support of this petition.

Dated, San Francisco, California,
October 22, 1941.

Respectfully submitted,
ROBERT B. GAYLORD,
Counsel for Petitioner.

GEORGE H. HAUERKEN,
Of Counsel.

CERTIFICATE OF COUNSEL.

I hereby certify that the foregoing petition, in my opinion, is well founded and entitled to the favorable consideration of the Court and that it is not interposed for purpose of delay.

Dated, San Francisco, California,
October 22, 1941.

ROBERT B. GAYLORD,
Counsel for Petitioner.

GEORGE H. HAUERKEN,
Of Counsel.